

Laurence D. King (SBN 206423)  
Linda M. Fong (SBN 124232)  
KAPLAN FOX & KILSHEIMER LLP  
350 Sansome Street, Suite 400  
San Francisco, CA 94104  
Telephone: 415-772-4700  
Facsimile: 415-772-4707  
Email: [lking@kaplanfox.com](mailto:lking@kaplanfox.com)  
[lfong@kaplanfox.com](mailto:lfong@kaplanfox.com)



*Attorneys for Plaintiff Debra F. Charles*

[Additional counsel listed on signature block]

E-filing

JCS

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

**CV 10 5322**

DEBRA F. CHARLES, individually and on  
behalf of all others similarly situated,

Plaintiff,

vs.

GRANT EVANS, JAMES E. OUSLEY,  
STEVEN HUMPHREYS, JAMES W.  
FRANKOLA, ROBERT J. BRANDEWIE,  
DAVID B. WRIGHT, BRAD BOSTON,  
ACTIVIDENTITY CORP., ASSA ABLOY  
INC. AND FITACQUISITION, INC.,

Defendants.

Case No.:

CLASS ACTION

**CLASS ACTION COMPLAINT FOR  
VIOLATIONS OF THE FEDERAL  
SECURITIES LAW**

**JURY TRIAL DEMANDED**

**CLASS ACTION COMPLAINT**

Plaintiff, by her attorneys, alleges the following upon information and belief, except for those allegations that pertain to plaintiff and her attorneys, which allegations are based on personal

1 knowledge. Plaintiff's information and belief is based on, *inter alia*, the investigation conducted by  
2 her attorneys, including a review of the public filings of defendant ActivIdentity Corp.  
3 ("ActivIdentity" or the "Company"), press releases, news articles and publicly available information  
4 concerning ActivIdentity:

5  
6 1. Plaintiff brings this action individually and as a class action on behalf of the public  
7 shareholders of ActivIdentity in connection with the purchase of ActivIdentity by Assa Abloy Inc.  
8 ("Assa Abloy" or "Parent"), and FitAcquisition, Inc., a wholly-owned subsidiary of Parent ("Merger  
9 Sub")(collectively, "Assa Abloy") for \$3.25 per share, pursuant to an Agreement and Plan of  
10 Merger by and among Merger Sub, and ActivIdentity dated as of October 11, 2010 (the "Merger  
11 Agreement"). Plaintiff alleges that the sale of ActivIdentity to Assa Abloy as contemplated by the  
12 Merger Agreement is unfair and inequitable to the ActivIdentity public stockholders and constitutes  
13 a breach of the fiduciary duties of the directors in the sale of ActivIdentity.  
14

15 2. Pursuant to the Merger Agreement, each share of ActivIdentity common stock will  
16 be exchanged for \$3.25 in cash representing a total transaction value of approximately \$162 million.  
17 Following completion of the exchange offer, Merger Sub will merge into ActivIdentity and the  
18 ActivIdentity shares not acquired in the exchange offer will convert into the right to receive the  
19 same consideration as paid in the exchange offer (the "Proposed Acquisition"). Assa Abloy has  
20 indicated its intent after the Merger to make the Company part of Assa Abloy's HID Global  
21 business.  
22

23 3. The Offer is subject to certain closing conditions, including approval of at least a  
24 majority of the outstanding shares of ActivIdentity common stock on a fully diluted basis. The  
25 2010 Special Meeting of Stockholders to consider and vote upon a proposal to adopt the Merger  
26 Agreement, among other matters, is scheduled for December 16, 2010.  
27  
28

1           4.     The Proposed Acquisition as currently constituted is unfair to ActivIdentity  
2 shareholders because it does not adequately value the Company's future growth prospects, which  
3 will inure to Assa Abloy if the Proposed Acquisition is consummated.

4           5.     The recent historical averages for ActivIdentity's stock price demonstrate that  
5 consideration being offered by Assa Abloy is unfair and inadequate.

6           6.     Indeed, the consideration to be paid to the class members is unconscionable, unfair  
7 and grossly inadequate because, among other things: (a) the intrinsic value of the stock of  
8 ActivIdentity is materially in excess of \$3.25 per share, giving due consideration to the possibilities  
9 of growth and profitability of ActivIdentity in light of its business, earnings and earnings power,  
10 present and future; (b) the \$3.25 per share price is inadequate and offers an inadequate premium to  
11 the public stockholders of ActivIdentity; and (c) the \$3.25 per share price is not the result of arm's-  
12 length negotiations but was fixed arbitrarily to "cap" the market price of ActivIdentity, as part of a  
13 plan for Assa Abloy to obtain complete ownership of ActivIdentity assets and business at the lowest  
14 possible price. Defendants' action in proceeding with the Proposed Acquisition is wrongful, unfair,  
15 and harmful to ActivIdentity's public stockholders, and will deny them their right to share  
16 proportionately in the true value of ActivIdentity's future growth in profits and earnings.

17           7.     Defendants have exacerbated their breaches of fiduciary duty by agreeing to lock up  
18 the Proposed Acquisition with deal protection devices that preclude other bidders from making a  
19 successful competing offer for the Company. Specifically, defendants agreed to: (i) a no-  
20 solicitation provision that prevents other buyers from having access to the Company's confidential  
21 information which information is necessary to formulate a bid, except under extremely limited  
22 circumstances; (ii) a matching rights provision that allows Assa Abloy prompt notice of a  
23 recommendation change to match any competing proposal in the event one is made; and (iii) a  
24 provision that requires the Company to pay Assa Abloy a termination fee of \$5.0 million or an  
25  
26  
27  
28

1 amount in cash equal to \$1.25 million, depending on the circumstances of the termination. These  
2 provisions substantially limit the Board of Director's ability to act with respect to investigating and  
3 pursuing superior proposals and alternatives including a sale of all or part of ActivIdentity.

4  
5 8. Finally, on November 12, 2010, ActivIdentity filed a Schedule 14A Definitive Proxy  
6 Statement (the "Proxy") with the Securities and Exchange Commission ("SEC") in connection with  
7 the Proposed Acquisition pursuant to which, *inter alia*, the ActivIdentity Board of Directors  
8 recommended that ActivIdentity stockholders vote "FOR" the approval and adoption of the Merger  
9 Agreement and in favor of the Proposed Acquisition at a scheduled shareholder vote on December  
10 16, 2010. In connection with the Proxy, Defendants have breached their duty of candor by failing  
11 to disclose material information to Proxy shareholders necessary for them to determine whether to  
12 vote in favor of the Proposed Acquisition.

13  
14 9. The Company's Board has breached its fiduciary duties to ActivIdentity shareholders  
15 by causing the Company to enter into the Merger Agreement that provides for the sale of  
16 ActivIdentity at an unfair price, and deprives ActivIdentity' public shareholders of maximum value  
17 to which they are entitled.

18  
19 10. Plaintiff and the class have suffered and will suffer irreparable injury unless  
20 defendants are enjoined from breaching their fiduciary duties and from carrying out the aforesaid  
21 plan and scheme. Plaintiff seeks to enjoin defendants from approving the Proposed Acquisition or,  
22 in the event the Proposed Acquisition is consummated, recover damages resulting from defendants'  
23 violations of their fiduciary duties of loyalty, good faith, and due care.

#### 24 **JURISDICTION AND VENUE**

25 11. The Court has jurisdiction over the subject matter of this action pursuant to section  
26 27 of the Exchange Act, 15 U.S.C. §78aa (2008), and 28 U.S.C. §§1331 and 1337 (2008). This  
27 Court also has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §1332(a)(2)  
28



1 since plaintiff and defendants are citizens of different states and the matter in controversy exceeds  
2 the jurisdictional amount of \$75,000, exclusive of interest and costs. This action is not a collusive  
3 action designed to confer jurisdiction on a court of the United States that it would not otherwise  
4 have.

5  
6 12. Venue is proper in this District pursuant to 28 U.S.C. §1391(a)(2) (2008) because  
7 ActivIdentity is headquartered in this District and a substantial portion of the transaction and  
8 occurrences complained of herein, including the Defendants' primary participation in the wrongful  
9 acts detailed herein, occurred in this District. In addition, one or more of the defendants either  
10 resides in or maintains executive offices in this District.

### 11 **THE PARTIES**

12  
13 13. Plaintiff has been a holder of ActivIdentity common stock since prior to the  
14 transactions herein complained of and continues to hold ActivIdentity common stock as of this date.  
15 Plaintiff is a resident of Washington, DC.

16 14. Defendant ActivIdentity is a corporation duly organized and existing under the laws  
17 of the State of Delaware with its principal offices located at 6623 Dumbarton Circle, Fremont,  
18 California, 94555. ActivIdentity operates as a global company in authentication and credential  
19 management, providing solutions to confidently establish a person's identity when interacting  
20 digitally. The company addresses three identity management market segments: Employer-to-  
21 Employee, Business-to-Customer, and Government-to-Citizen. It markets and sells its products and  
22 technologies through a worldwide direct sales force and through a network of partners, including  
23 system integrators, original equipment manufacturers, value added distributors, and value added  
24 resellers. The Company was founded in 1985.

25  
26 15. Defendant Grant Evans ("Evans") is Chairman of the Board and Chief Executive  
27 Officer of ActivIdentity. Evans has served as Chairman of the Board of ActivIdentity since March  
28

1 2008 and Chief Executive Officer of the Company since April 2008. Defendant Evans is a resident  
2 of California.

3 16. Defendant James E. Ousley ("Ousley") is a director of ActivIdentity. Ousley has  
4 served as a director of the Company since September 1996. He has been an industry consultant  
5 since 2004. Defendant Ousley is a resident of California.

6 17. Defendant Steven Humphreys ("Humphreys") is a director of ActivIdentity. He has  
7 served as CEO of Kleer Semiconductor since February 2009. Since July 1996, Humphreys has  
8 served as a director of Identive Group (formerly SCM Microsystems), and was Chairman of the  
9 board of directors of SCM from April 2000 to March 2007. Since April 2008, he has served as a  
10 director of HeadThere, Inc., since March 2009 as a director of Organ-I, Inc., and since October  
11 2003, as chairman of Robotic Innovations International, Inc., an acquirer and developer of  
12 technologies for broad based applications of robotics, service automation and automated control  
13 systems. Defendant Humphreys is a resident of California.

14 18. Defendant James W. Frankola ("Frankola") has served as a director of ActivIdentity  
15 since February 2006. Defendant Frankola has served as Executive Vice President of Ariba, Inc., a  
16 provider of on-demand spend management solutions, since December 2001 and as Chief Financial  
17 Officer of Ariba from December 2001 through August 2008. Defendant Frankola is a resident of  
18 California.

19 19. Defendant Robert J. Brandewie ("Brandewie") has served as a director of  
20 ActivIdentity since March 2008. Defendant Brandewie has served since November 2007 as the  
21 Senior Vice President, Identity and Security Solutions of Telos Corporation, an information  
22 technology solutions and services company. Defendant Brandewie is a resident of California.

23 20. Defendant David B. Wright ("Wright") has served as a director of ActivIdentity  
24 since March 2008. Wright has served since August 2006 as the Chief Executive Officer and  
25

Chairman of the Board for Verari Systems, Inc., a provider of high performance computing systems to the financial services, service providers, entertainment media, oil and gas, government and EDA industries. Defendant Wright also serves on the board of directors of SourceForge, Inc., a corporation that owns and operates a network of media web sites, serving the IT management and IT professional, software development and open source communities and other consumers. Defendant Wright is a resident of California.

21. Defendant Brad Boston ("Boston") has served as a director of ActivIdentity since January 2010. Defendant Boston currently serves as senior vice president of Cisco Systems' Global Government Solutions Group and Corporate Security Programs. Defendant Boston is a resident of California.

22. The individual defendants in ¶¶15–21 constitute the Board of ActivIdentity (the "Individual Defendants") and, by reason of their corporate directorships and executive positions, stand in a fiduciary position relative to the Company's public shareholders. Their fiduciary duties, at all times relevant herein, required them to exercise their best judgment, and to act in a prudent manner, and in the best interest of the Company's minority shareholders. Said defendants owe the public shareholders of ActivIdentity the highest duty of good faith, fair dealing, due care, loyalty, and full, candid and adequate disclosure.

23. Defendant Assa Abloy is an Oregon corporation. Assa Abloy manufactures and sells locks, cylinders, electromechanical products, security doors and fittings. The primary product areas are the traditional segments of mechanical locks and security doors, as well as the fast-growing segments of electromechanical and electronic locks, access control, identification technology and automatic doors.

24. Defendant Merger Sub is a Delaware Corporation and a wholly owned subsidiary of Assa Abloy formed for the purpose of acquiring ActivIdentity.

26. ActivIdentity, the Individual Defendants and Assa Abloy are collectively referred to herein as “Defendants.”

27. Each Defendant herein is sued individually or as a conspirator or aider and abettor, as well as in his capacity as an officer and/or director of the Company, and the liability of each arises from the fact that he or she has engaged in all or part of the unlawful acts, plans, schemes, or transactions complained of herein.

## **CLASS ACTION ALLEGATIONS**

28. Plaintiff brings this action on her own behalf and as a class action, on behalf of all shareholders of defendant ActivIdentity (except Defendants herein and any person, firm, trust, corporation or other entity related to or affiliated with any of the Defendants) or their successors in interest, who have been or will be adversely affected by the conduct of Defendants alleged herein.

29. This action is properly maintainable as a class action.

30. The class of shareholders for whose benefit this action is brought is so numerous that joinder of all class members is impracticable. There are approximately 47 million shares of common stock outstanding owned by thousands of shareholders of record scattered throughout the United States.

31. There are questions of law and fact which are common to members of the Class. The common questions include, *inter alia*, the following:

- a. whether the ActivIdentity directors have breached their fiduciary duties to Plaintiff and the Class in connection with the Merger Agreement and related transactions; and



b. whether Plaintiff and the other members of the Class will be damaged irreparably by Defendants' failure to take action designed to obtain the best value for the public stockholders' interest in ActivIdentity.

32. Plaintiff is committed to prosecuting this action and has retained competent counsel experienced in litigation of this nature. The claims of Plaintiff are typical of the claims of the other members of the Class and Plaintiff has the same interests as the other members of the Class. Accordingly, Plaintiff will fairly and adequately represent the Class.

33. The prosecution of separate actions by individual members of the Class would create a risk of inconsistent or varying adjudications with respect to individual members of the Class and establish incompatible standards of conduct for the party opposing the Class.

34. Defendants have acted and are about to act on grounds generally applicable to the Class, thereby making appropriate final injunctive relief with respect to the Class as a whole.

### **SUBSTANTIVE ALLEGATIONS**

35. On October 11, 2010, ActivIdentity and Assa Abloy jointly issued a press release entitled, "ActivIdentity to Be Acquired by ASSA ABLOY, Parent Company of HID Global", and with the subtitle, "ActivIdentity to Join the HID Global Business Unit, Advancing the Convergence of Logical and Physical Access Systems." The release stated in part:

FREMONT, CA--(Marketwire - 10/11/10) - ActivIdentity Corporation, (NASDAQ:ACTI - News), a global leader in intelligent identity assurance, today announced that the company has entered into a definitive agreement to be acquired by ASSA ABLOY AB, the parent company of HID Global, in a cash transaction at a price of \$3.25 per share, or approximately \$162 million. This per share price represents a premium of approximately 43% over the closing price of ActivIdentity shares on Friday, October 8, 2010 and a premium of 48% over the 20-day average of closing prices. ActivIdentity will become part of ASSA ABLOY's HID Global business and ActivIdentity products will provide the foundation for HID Global's logical access offering.

1 The acquisition, which is subject to ActivIdentity shareholder approval,  
2 applicable regulatory clearances and other customary closing conditions, is  
3 expected to close in December 2010.

4 Commercial and government organizations are faced with ever-changing  
5 threats to their information and physical assets and, at the same time, they  
6 must deal with a broad range of compliance requirements. Optimizing security  
7 while simplifying the user experience and minimizing costs is an enormous  
8 challenge that can best be solved by joining logical and physical access  
9 capabilities into a single, integrated solution. The combination of  
10 ActivIdentity's suite of identity assurance solutions with HID's physical and  
11 logical access solutions, provides a powerful offering to the market.

12 "Organizations and their users are burdened with the expense and complexity  
13 of redundant identity assurance technologies," said Grant Evans, chairman and  
14 CEO of ActivIdentity. "Now for the first time, customers will be able to  
15 benefit from the convergence of physical and logical access control solutions."

16 "Through the combined power of HID Global and ActivIdentity, we have a  
17 compelling opportunity to finally address the use of a single credential for  
18 access to physical and logical domains," said Denis Hebert, president and  
19 CEO of HID Global. "ActivIdentity is a strong complement to our identity and  
20 access management solutions, enabling us to add a new dimension in our  
21 ability to deliver value to our customers."

22 Foros Securities LLC acted as exclusive financial adviser to ActivIdentity.  
23 Wilson Sonsini Goodrich & Rosati, P.C. acted as counsel to ActivIdentity.

24 36. Pursuant to the Merger Agreement, each share of Company common stock accepted  
25 by Merger Sub will be exchanged for \$3.25 in cash.

26 37. A shareholder vote has been scheduled for December 16, 2010. The Proposed  
27 Acquisition is subject to the approval of at least a majority of the shares of ActivIdentity common  
28 stock.

38. Foros Securities LLC is acting as financial advisor to ActivIdentity.

39. The Proposed Acquisition serves no legitimate business purpose of ActivIdentity but  
rather is an attempt by defendants to enable Assa Abloy to benefit unfairly from the transaction at  
the expense of ActivIdentity's public shareholders. The Proposed Acquisition will, for a grossly  
inadequate consideration, deny plaintiff and the other members of the class their right to share

1 proportionately in the future success of ActivIdentity and its valuable assets, while permitting Assa  
2 Abloy to reap huge benefits from the transaction.

3 40. The consideration to be paid to the class members is unconscionable, unfair and  
4 grossly inadequate because, among other things: (a) the intrinsic value of the stock of ActivIdentity  
5 is materially in excess of \$3.25 per share, giving due consideration to the possibilities of growth and  
6 profitability of ActivIdentity in light of its business, earnings and earnings power, present and  
7 future; (b) the \$3.25 per share price is inadequate and offers an inadequate premium to the public  
8 stockholders of ActivIdentity; and (c) the \$3.25 per share price is not the result of arm's-length  
9 negotiations but was fixed arbitrarily to "cap" the market price of ActivIdentity, as part of a plan for  
10 Assa Abloy to obtain complete ownership of ActivIdentity assets and business at the lowest  
11 possible price.  
12

13 41. In addition to agreeing to a sale of the Company at an unfair price, the Individual  
14 Defendants agreed to onerous deal protection devices in breach of their fiduciary duties to  
15 ActivIdentity shareholders, which prevent a superior offer from being made for the Company.  
16 Specifically, defendants agreed to: (i) a no-solicitation provision that prevents other buyers from  
17 having access to the Company's confidential information which information is necessary to  
18 formulate a bid, except under extremely limited circumstances; (ii) a matching rights provision that  
19 allows Assa Abloy prompt notice of a recommendation change to match any competing proposal in  
20 the event one is made; and (iii) a provision that requires the Company to pay Assa Abloy a  
21 termination fee of \$5.0 million or an amount in cash equal to \$1.25 million, depending on the  
22 circumstances of the termination. These provisions substantially limit the Board of Director's  
23 ability to act with respect to investigating and pursuing superior proposals and alternatives including  
24 a sale of all or part of ActivIdentity.  
25  
26  
27  
28

1           42.     The terms of the Merger Agreement are structured to ensure that Assa Abloy, and  
2 only Assa Abloy, ultimately acquires ActivIdentity, regardless of whether such terms are designed  
3 and/or serve to maximize shareholder value.

4           43.     The Termination Fee and expense obligation are deterrents to other potential bidders  
5 and provides defendants with an unearned windfall at the expense of the Company's public  
6 shareholders if a superior bid emerges.

7           44.     Accordingly, the terms of the Merger Agreement substantially limit the Board's  
8 ability to act with respect to investigating and pursuing superior proposals and alternatives including  
9 a sale of all or part of ActivIdentity.  
10

11                           **The Proxy is Materially Misleading and/or Incomplete**  
12

13           45.     On November 12, 2010, ActivIdentity filed the Proxy in connection with the  
14 Proposed Acquisition and seeking, *inter alia*, the approval of ActivIdentity shareholders of the  
15 Merger Agreement and the transactions contemplated thereby.

16           46.     The Proxy fails to provide the Company's shareholders with material information  
17 and/or provides them with materially misleading information thereby rendering the shareholders  
18 unable to make an informed decision on whether to vote in favor of the Proposed Acquisition.

19           47.     For example, the Proxy fails to disclose certain of the underlying methodologies,  
20 projections, key inputs and multiples relied upon and observed by Foros Securities LLC ("Foros"),  
21 the Company's financial advisor, so that shareholders can properly assess the credibility of the  
22 various analyses performed by them and relied upon by the Board in recommending the Proposed  
23 Acquisition.  
24

25           48.     In addition, the Proxy fails to disclose the underlying methodologies, key inputs and  
26 multiples relied upon and observed by Foros so that shareholders can properly assess the credibility  
27  
28



of the various analyses performed by them. In particular, the Proxy is deficient and should provide, *inter alia*, the following:

- A. In the *Selected Companies Analysis*, (i) the criteria for the selected two companies; (ii) the basis for the annual percentage growth rate of estimated total revenue from calendar year 2009 to calendar year 2010 and from calendar year 2010 to calendar year 2011; (iii) the basis for the annual percentage growth rate of estimated earnings before interest, tax, depreciation and amortization ("EBITDA"), from calendar year 2010 to calendar year 2011; and (iv) the basis for the estimated EBITDA margin for calendar year 2010 and calendar year 2011.
- B. In the *Discounted Cash Flow Analysis*, (i) the definition of unlevered cash flows for the fiscal years 2011 – 2014; and (ii) the basis for calculating a normalized free cash flow figure after 2014 and then applying perpetuity growth rates ranging from 1.0% to 3.0%.
- C. In the *Selected Precedent Transactions Analysis*, (i) the criteria for the selected companies; and (ii) the multiples observed for each transaction.
- D. In the *Premia Paid Analysis*, (i) the reasons for the data points selected; (ii) how many transactions were included in this analysis; (iii) a description of all of the transactions; and (iv) the respective premiums in each transaction.

49. In addition, the Proxy fails to disclose any prior or present relationships between defendants and Foros, if any. Additionally, the Proxy fails to disclose the contingent portion of the \$2.15 million fee payable in connection with Foros's analysis.

50. By virtue of their positions as directors and senior officers of the Company, the Individual Defendants have access to and knowledge of ActivIdentity's internal financial information which reveals the true financial and operating condition and prospects of the Company, and have shared such information with Assa Abloy. Defendants are using this information to benefit themselves at the expense and to the detriment of ActivIdentity and the public shareholders.



57. The Defendants named in this claim disseminated the false and misleading Proxy which they knew or should have known was misleading in that it contained misrepresentations and failed to disclose material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading.

58. The Proxy was prepared and disseminated by Defendants named in this claim. It misrepresented and/or concealed certain material information concerning the nature of the process involved in the Proposed Transaction and the true value of the Company. In so doing, they made untrue statements of material facts and omitted to state material facts necessary to make the statements that were made not misleading in violation of §14(a) of the 1934 Act and SEC Rule 14a-9 promulgated thereunder.

59. The Defendants named in this claim issued the Proxy, which was materially false and misleading. The Defendants were aware of and/or had access to the true facts concerning the process involved in selling the Company and the true value of the Company. However, notwithstanding this knowledge, each of the Defendants purported to and/or approved the dissemination of the false Proxy.

60. Defendants permitted the Company to be sold in an effort to aggrandize their own financial position and interests at the expense of ActivIdentity shareholders. By relying on the false and misleading statements in the Proxy, the shareholders who are unaware of untruths, and relied thereon, were directly and proximately harmed by the Defendants' wrongful conduct. By reason of such misconduct, the Defendants are liable pursuant to §14(a) of the 1934 Act and SEC Rule 14a-9 promulgated thereunder.

## SECOND CAUSE OF ACTION

### **Claim for Breach of Fiduciary Duties**

61. Plaintiff repeats and realleges each allegation set forth herein.

1           62.     The Individual Defendants have violated their fiduciary duties of care, good faith,  
2 and loyalty owed under applicable law to the public shareholders of ActivIdentity and have placed  
3 the interests of insiders ahead of the interests of ActivIdentity's shareholders.

4           63.     As demonstrated by the allegations above, the Individual Defendants failed to  
5 exercise the care required, and breached their duties of loyalty, good faith, care and candor owed to  
6 the shareholders of ActivIdentity because, among other reasons:

7                 a.     they failed to properly value ActivIdentity;

8                 b.     they failed to take steps to maximize the value of ActivIdentity to its public  
9 shareholders and they took steps to avoid competitive bidding, and to give Assa Abloy an  
10 unfair advantage, by, among other things, failing to adequately solicit other potential  
11 acquirers or alternative transactions;

12                 c.     they failed to properly value ActivIdentity and its various assets and  
13 operations;

14                 d.     they ignored or did not protect against the numerous conflicts of interest  
15 resulting from the directors' own interests in connection with the Proposed Acquisition; and

16                 e.     they erected unreasonable barriers to other third-party bidders.

17           64.     By the acts, transactions and courses of conduct alleged herein, the Individual  
18 Defendants, individually and as part of a common plan and scheme and in breach of their fiduciary  
19 duties of loyalty, good faith and due care to Plaintiff and the other members of the Class, have  
20 failed to adequately inform themselves about the true value of the Company and, by agreeing to the  
21 Proposed Acquisition with Assa Abloy, will unfairly deprive Plaintiff and other members of the  
22 Class of the true value of their investment in ActivIdentity.

23           65.     ActivIdentity shareholders will, if the Proposed Acquisition is consummated, be  
24 deprived of the opportunity for substantial gains which the Company may realize.  
25  
26  
27  
28



1           66. By reason of the foregoing acts, practices and course of conduct, the Individual  
2 Defendants have failed to exercise care and diligence in the exercise of their fiduciary obligations  
3 toward Plaintiff and the other ActivIdentity public stockholders.

4           67. As a result of the actions of Defendants, Plaintiff and the other members of the Class  
5 have been and will be damaged in that they have not and will not receive their fair proportion of the  
6 value of ActivIdentity's assets and businesses and will be prevented from obtaining appropriate  
7 consideration for their shares of ActivIdentity common stock.

8           68. Unless enjoined by this Court, the Defendants will continue to breach their fiduciary  
9 duties owed to Plaintiff and the other members of the Class, and may consummate the Proposed  
10 Acquisition which will exclude the Class from its fair proportionate share of ActivIdentity's  
11 valuable assets and businesses, all to the irreparable harm of the Class, as aforesaid.

12           69. Plaintiff and the Class have no adequate remedy at law. Only through the exercise of  
13 this Court's equitable powers can Plaintiff and the Class be fully protected from the immediate and  
14 irreparable injury which Defendants' actions threaten to inflict.

15  
16  
17 **THIRD CAUSE OF ACTION**

18 **On Behalf of Plaintiff and the Class Against**  
19 **Assa Abloy for Aiding and Abetting the**  
20 **Individual Defendants' Breaches of Fiduciary Duty**

21           70. Plaintiff incorporates by reference and realleges each and every allegation contained  
22 above, as though fully set forth herein.

23           71. Assa Abloy has knowingly aided and abetted the Individual Defendants' wrongdoing  
24 alleged herein. Assa Abloy is an active and necessary participant in the Individual Defendants' plan  
25 to complete the Proposed Acquisition terms that are unfair to ActivIdentity shareholders, as Assa  
26 Abloy seeks to pay as little as possible to ActivIdentity shareholders.

27           72. Plaintiff has no adequate remedy at law.  
28

**PRAYER FOR RELIEF**

**WHEREFORE**, Plaintiff demands injunctive relief in her favor and in favor of the Class and against Defendants as follows:

A. Declaring that this action is properly maintainable as a Class action;

B. Declaring and decreeing that the Merger Agreement was entered into in breach of the fiduciary duties of Defendants and is therefore unlawful and unenforceable;

C. Enjoining Defendants, their agents, counsel, employees and all persons acting in concert with them from consummating the Proposed Acquisition, unless and until the Company adopts and implements a procedure or process to obtain a merger agreement providing the best possible terms for shareholders;

D. Directing the Individual Defendants to exercise their fiduciary duties to obtain a transaction which is in the best interests of ActivIdentity's shareholders until the process for the sale or auction of the Company is completed and the best possible consideration is obtained for ActivIdentity;

E. Awarding Plaintiff the costs and disbursements of this action, including reasonable attorneys' and experts' fees; and

F. Granting such other and further relief as this Court may deem just and proper.

G. Plaintiff demands a trial by jury.

DATED: November 23, 2010

Respectfully submitted,

KAPLAN FOX & KILSHEIMER LLP

By: 

Laurence D. King (SBN 206423)

1 Linda M. Fong (SBN 124232)  
2 350 Sansome Street, Suite 400  
3 San Francisco, CA 94104  
4 Telephone: 415-772-4700  
5 Facsimile: 415-772-4707  
6 [lking@kaplanfox.com](mailto:lking@kaplanfox.com)  
7 [lfong@kaplanfox.com](mailto:lfong@kaplanfox.com)

8 Joshua M. Lifshitz  
9 Peter D. Bull  
10 BULL & LIFSHITZ, LLP  
11 18 East 41st Street  
12 New York, NY 10017  
13 Telephone: (212) 213-6222  
14 Facsimile: (212) 213-9405  
15 [counsel@nyclasslaw.com](mailto:counsel@nyclasslaw.com)

16 *Attorneys for Plaintiff Debra F. Charles*  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28